REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BAKUN POWER LINE CORPORATION,
Petitioner,

C.T.A. CASE NO. 6701

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 14 2007; 2:30 PM

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DECISION

ACOSTA, E., PJ.:

This is a case involving a claim for refund or tax credit in the amount of P1,210,918.35 allegedly representing unutilized creditable withholding taxes for the taxable year 2002.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 6TH Floor, Legaspi Building, 110 Legaspi Village, Makati City. It is registered with the Bureau of Internal Revenue under Revenue District No. 47 – East Makati with Tax Identification Number 201-240-453-000.[1]

On the other hand, respondent is the Commissioner of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City.[2]

Petitioner was organized for the purpose of acting as managers or managing agents of persons, firms, associations, corporations, partnership and other entities engaged in the hydropower or related business; to provide management, investment and technical advice for commercial, industrial, manufacturing and other kinds of enterprises engaged in the hydropower or related businesses; to undertake, carry on, participate or assist in the formation of partnerships, corporations, and other entities engaged in the hydropower business; to develop, construct, own, lease and operate a hydropower plant; to engage in built-operate-transfer arrangements with the government, its branches, agencies and instrumentalities, and any non-government entity; and to carry on the general business of manufacture, generation and/ or transmission of electric power, among others.[3]

Petitioner constructed transmission lines for the National Power Corporation (NAPOCOR) for the year 2000.[4] On April 18, 2001, petitioner filed its income tax return for the year 2000 declaring a gross revenue of P125,682,676.00.[5] Petitioner

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[1] Paragraph 1, Summary of Admitted Facts, Records, p. 93
[2] Paragraph 2, Summary of Admitted Facts, Records, p. 93
[3] Paragraph 3, Summary of Admitted Facts, Records, pp. 93-94
[4] Par. 1, Stipulated Facts, Records, p. 96
[5] Exhibit Q

alleges that the said amount included the revenue earned from the above NAPOCOR project amounting to P60,545,917.06.

For the year 2001, petitioner collected from NAPOCOR the amount of P7,222,558.00 upon which P144,451.17 was withheld.[6] Based on its Audited Financial Statement for the same year, the petitioner incurred losses amounting to P3,769,746.00.[7]

For the following periods, the petitioner avers that NAPOCOR withheld and paid to the Bureau of Internal Revenue at the rate of 2% (pursuant to Revenue Regulations No. 14-02 Section 2.57.2E) of the gross payments due to the petitioner, the following taxes:

Date of Payment	**Taxes Withheld**
January 3, 2002	P 144,451.17[8]
February 2, 2002	535,368.55[9]
March 5, 2002	402,533.93[10]
May 3, 2002	128,564.70[11]
TOTAL	**P1,210,918.35**

For the year 2002, the petitioner declared a loss of P684,896.00 on its original income tax return filed on April 15, 2003, without indicating therein any overpayment of taxes.[12] On May 20, 2003, petitioner filed its amended income tax return reporting therein the same amount of losses but this time declared the

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[6] Exhibit U and M-1
[7] Exhibit S-2
[8] Exhibit M-1
[9] Exhibit N-1
[10] Exhibit O-1
[11] Exhibit P-1
[12] Records, p. 185

amount of P1,210,918.00 as overpayment of taxes.[13] The petitioner again filed an amended income tax return with the following information:[14]

Gross Income	- 0 -
Less: Deductions	4,857,587.00
Taxable Income	(4,857,587.00)
Tax rate	32%
Income tax	- 0 -
Less: Tax credits/Payments	
Prior year's Excess Credit	144,451.00
Creditable Tax Withheld for the first three quarters	1,066,467.00
Total Tax Credits/Payments	1,210,918.00
Tax Payable(Overpayment)	(1,210,918.00)

An administrative claim for refund of its excess creditable withholding tax and excess creditable withholding VAT in the aggregate amount of P2,538,407.17 for the years 2001 and 2002 was filed by the petitioner on April 29, 2003.[15] Subsequently, on May 29, 2003, it filed an Application for Tax Credit/Refund (BIR Form No. 1914) of its unutilized creditable withholding tax on income payments amounting to P1,210,918.00.[16]

To toll the running of the prescriptive period within which to file a claim for refund, petitioner filed this Petition for Review on June 10, 2003. A Motion to Admit Amended Petition for Review was filed by petitioner on September 25, 2003 to include substantial allegations that were inadvertently omitted in the original petition. The same was admitted by this Court on October 10, 2003.

[signature]

[13] Records, p. 184
[14] Exhibit R
[15] Exhibit B
[16] Paragraph 4, Summary of Admitted Facts; Annex H, Petition for Review

Respondent filed his Answer on July 28, 2003,[17] and an Amended Answer October 23, 2003[18] interposing the following Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 7. Petitioner failed to prove the following, to wit:
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> a. That the total amount of P1,210,918.35 allegedly claimed by it as unutilized creditable income tax withheld for taxable year 2002 was duly substantiated.
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> b. That the subject of the instant claim has not been carried-over or applied against any of its income tax liability for the succeeding taxable year/period.
>
> c. That it has incurred tax loss for taxable year 2002.
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> d. That the alleged income tax payments from which the taxes were withheld were included in its gross income for taxable year 2002.
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> 8. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204 in relation to Section 230 (now 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

This case was submitted for decision on June 20, 2006 sans the memorandum of respondent.

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[17] Records, p. 44
[18] Records, p. 72

The parties stipulated on the following issues for the resolution of the Court:

"1. Whether or not petitioner filed a claim for refund within the 2-year period as prescribed under Sec. 229 of the NIRC;

2. Whether or not income payments from which the taxes were withheld were included in petitioner's gross income;

3. Whether or not petitioner sustained net loss from its operation;

4. Whether of not petitioner has excess/unutilized creditable withholding tax;

5. Whether or not petitioner has carried-over to the succeeding taxable years the alleged excess/unutilized creditable withholding tax;

6. Whether of not petitioner's claim for refund of the alleged excess/unutilized creditable withholding tax was duly substantiated;

7. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the sum of P1,210,918.35 as alleged excess/unutilized creditable withholding tax on income payments."[19]

Section 76 of 1997 National Internal Revenue Code provides:

"**SEC. 76.** ***Final Adjustment Return.*** — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against**

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[19] Records, p. 97

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> **income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

In other words, Section 76, gives a corporation three options as regards its excess quarterly income tax payments/creditable withholding taxes, namely:

a) to be refunded;

b) to be issued a tax credit certificate; and

c) to carry-over as excess credit to the succeeding taxable quarters/years. Section 76 is likewise explicit. *Once the option of carry-over has been made, the same becomes irrevocable for that taxable period* and consequently, an application for cash refund or issuance of tax credit certificate shall be not be allowed.

Thus, in several cases, this Court has categorically ruled that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.[20]

The Court of Appeals has likewise ruled in the case of *Commissioner of Internal Revenue vs. Honda Phil., Inc.*,[21] that "since the rule of irrevocability of the option to carry-over the tax credit applies to respondent, it cannot file a claim for cash refund for its unutilized tax credit."

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[20] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, dated March 12, 2003; Philam Asset Management, Inc. vs. Commissioner Internal Revenue, CTA Case No. 6210, dated May 2, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, dated April 19, 2002; Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, dated March 1, 2002; and The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6280, August 16, 2001

The present claim in the amount of P1,210,918.35 covers excess creditable withholding taxes for taxable years 2001 and 2002. A scrutiny of petitioner's 2002 amended income tax return reveals that petitioner reflected an excess tax credit of P1,210,918.00,[22] the details of which are as follows:

Gross Income	P	- 0 -
Less: Deductions		4,857,587.00
Taxable Income		(4,857,587.00)
Tax rate		32%
Income tax		- 0 -
Less: Tax credits/Payments		
Prior year's Excess Credit		144,451.00
Creditable Tax Withheld for the first three quarters		1,066,467.00
Total Tax Credits/Payments		1,210,918.00
Tax Payable(Overpayment)		(1,210,918.00)

From the foregoing, it is clear that the amount of P144,451.00 declared by the petitioner as "Prior year's Excess Credit", was already carried-over from the year 2001 and, therefore, not available for refund. To reiterate, *once the option of carry-over has been made, the same becomes irrevocable for that taxable period and consequently, an application for cash refund or issuance of tax credit certificate shall not be allowed.* The taxpayer is given the option, however, to continuously carry-over such amount to the next taxable quarters/years until fully utilized.

Anent the remaining claim of P1,066,467.00, petitioner, for the taxable year 2002, filed its original income tax return on April 15, 2003, declaring a loss of P684,896.00, without indicating therein any overpayment of taxes.[23] On May 20,

[21] CA-GR SP No. 68141, October 25, 2002
[22] Exhibit R-1
[23] Records, p. 185

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2003, however, petitioner filed its amended income tax return with the same amount of losses but included therein the amount of P1,210,918.00 as overpayment of taxes.[24] Then on November 17, 2003, another amended income tax return[25] was filed by petitioner declaring a net loss of P4,857,587.00 and "Creditable Tax Withheld for the First Three Quarters" amounting to P1,066,467.00.

Based on the evidence submitted, the amount of P1,066,467.18 is broken down as follows:

Period Covered	Income Payments	Tax Withheld
January 2002	P26,768,427.80	P 535,368.55[26]
February 2002	P20,126,696.50	P 402,533.93[27]
April 2002	P 6,428,234.90	P 128,564.70[28]
TOTAL	P53,323,359.20	P1,066,467.18

For its claim to be granted, petitioner must first show compliance with the following basic requirements:

1. That the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;
2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. That the income upon which the taxes were withheld was included in the return of the recipient.[29]

Petitioner complied with the first requirement considering that its claim for refund was filed within the two-year prescriptive period counted from the date of

[24] Records, p. 184
[25] Exhibit R
[26] Exhibit N and N-1
[27] Exhibit O and O-1
[28] Exhibit P and P-1
[29] Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459

filing of its final adjustment return.[30] Petitioner filed its 2002 annual income tax return on April 15, 2003. Thus, it had until April 14, 2005[31] within which to file both its administrative and judicial claims. Petitioner filed its letter claim for refund with the respondent on April 29, 2003[32] and the instant Petition for Review was filed on June 10, 2003, hence, well within the two-year prescriptive period pursuant to Section 204(C) in relation to Section 229 of the NIRC of 1997.

Likewise, petitioner has complied with the second requirement as it has proven the fact of withholding. Petitioner presented in evidence the following Certificates of Creditable Tax Withheld at Source issued by the National Power Corporation reflecting therein income payments and taxes withheld in the sums of P53,323,358.80 and P1,066,467.18, respectively:

Exhibit	**Period Involved**	**Withholding Agent**	**Income Payment**	**Tax Withheld**
N	1/1/02-1/31/02	National Power Corporation	P 26,768,427.40	P 535,368.55
O	2/1/02-2/28/02	National Power Corporation	20,126,696.50	402,533.93
P	4/1/02-4/30/02	National Power Corporation	6,428,234.90	128,564.70
		Total	**P53,323,358.80**	**P1,066,467.18**

Lastly, the income upon which the taxes were withheld was included as part of the gross income declared in petitioner's income tax return. Thus, it had complied with the third requirement.

Petitioner used the Percentage of Completion Method in accounting for its revenues[33] in accordance with Section 48 of the National Internal Revenue Code of

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[30] ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957
[31] The year 2004 was leap year
[32] Exhibit B
[33] See No. 2 of Notes to Financial Statements as of December 31, 2001 & 2000, Records, p. 209

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1997. This method is described under Revenue Audit Memorandum Order No. 2-95 as follows:

> D. Percentage of Completion Basis is a method applicable in the case of a building, installation or construction contract covering a period in excess of one year whereby gross income derived from such contract may be reported upon the basis of percentage of completion. xxx

Records reveal that as of December 31, 2000, petitioner had completed its project in relation to the construction of the transmission line for Luzon Hydro Corporation, a party to the Power Purchase Agreement with the National Power Corporation, for the construction and operation of a 70 megawatt power station in Bakun River, and no definite plans yet to engage in another.[34] As of December 31, 2000, petitioner declared its remaining revenues to be P125,682,676.00.[35] Consequently, no revenues could be declared in the succeeding taxable years 2001, 2002 and 2003. The income of P53,323,358.80 corresponding to the 2002 creditable withholding taxes in the amount of P1,066,467.18, which is part of the subject claim for refund, was already part of the income declared in the 2000 annual income tax return. This was further bolstered by petitioner when it presented a Schedule of Revenue for the year ended December 31, 2000[36] and a schedule of the Subsequent Collection of Year 2000 Receivables from NPC.[37] For taxable year 2000, petitioner's total revenues amounted P125,682,675.96 which already included the receivables from the National Power Corporation in the amount of P61,947,490.80.

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[34] See No. 1 of Notes to Financial Statements as of December 31, 2000 and 1999 and as of December 2001 and 2000, Records, pp. 176 & 208
[35] Exhibit Q
[36] Exhibit T
[37] Exhibit U

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The receivables were subsequently collected in 2001 and 2002 of which the National Power Corporation withheld the taxes.

In fine, petitioner having complied with the three (3) requirements above set forth, its claim for refund/tax credit in the amount of P1,066,467.18 is therefore granted.

WHEREFORE, the Petition for Review is hereby ***PARTIALLY GRANTED***. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P1,066,467.18 representing unutilized creditable withholding taxes for the taxable year 2002.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division